

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Application by Verizon Maryland Inc.,)	
Verizon Washington, D.C. Inc., Verizon)	
West Virginia Inc., Bell Atlantic)	
Communications, Inc. (d/b/a Verizon Long)	WC Docket No. 02-384
Distance), NYNEX Long Distance Company)	
(d/b/a Verizon Enterprise Solutions),)	
Verizon Global Networks Inc., and Verizon)	
Select Services, Inc., for Authorization to)	
Provide In-Region, InterLATA Services in)	
Maryland, Washington, D.C., and West Virginia)	

EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

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DOJ Kansas/Oklahoma Evaluation	Evaluation of the U.S. Department of Justice, <i>In re: Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma</i> , FCC CC Docket No. 00-217 (Dec. 4, 2000), available at < http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm >.
DOJ Missouri I Evaluation	Evaluation of the U.S. Department of Justice, <i>In re: Application of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Missouri</i> , FCC CC Docket No. 01-88 (May 9, 2001), available at < http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm >.
DOJ Oklahoma I Evaluation	Evaluation of the U.S. Department of Justice, <i>In re: Application of SBC Communications Inc. et al Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in the State of Oklahoma</i> , FCC CC Docket No. 97-121 (May 16, 2001), available at < http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm >.
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<i>FCC Massachusetts Order</i>	Memorandum Opinion and Order, <i>In re: Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts</i> , 16 FCC Rcd 8988 (Apr. 16, 2001), available at < http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications >.
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<i>FCC New York Order</i>	Memorandum Opinion and Order, <i>In re: Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Services in the State of New York</i> , 15 FCC Rcd 3953 (Dec. 22, 1999), <i>aff'd</i> , <i>AT&T Corp. v. FCC</i> , 220 F.3d 607 (D.C. Cir. 2000), available at < http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications >.

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District of Columbia PSC PMs Order	Order, <i>In re: Development of Local Exchange Carrier Quality of Service Standards for the District</i> , District of Columbia PSC Docket No. 990-T-199, Order 12394 (Sept. 5, 2002), <i>attached to</i> Verizon Br. App. G-DC as Tab 6.
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Maryland PSC PMs Letter	Letter from Maryland Public Service Commission to All Parties and Interested Persons, <i>In re: Commission's Consideration of the Maryland Carrier-to-Carrier Guidelines, Performance Standards and Reports; and the Performance Assurance Plan of Verizon Maryland, Inc.</i> , Maryland PSC Docket No. 8916 (Oct. 31, 2002), <i>attached to</i> Verizon Br. App. J-MD as Tab 8.
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Maryland PSC Section 271 Compliance Letter II	Letter from Maryland Public Service Commission to William R. Roberts, Verizon Maryland Inc., <i>In re: Review by the Commission into Verizon Maryland Inc.'s Compliance with the Conditions of 47 U.S.C. § 271(c)</i> , Maryland PSC Docket No. 8921 (Dec. 17, 2002), attached to Verizon Br. App. Q-MD as Tab 30.
West Virginia PSC Comments	Commission Order and Consultative Report, <i>In re: Application by Verizon Maryland Inc., Verizon Washington, D.C. Inc., Verizon West Virginia Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia</i> , FCC WC Docket No. 02-384 (Jan. 9, 2003).
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Verizon Roberts/Garzillo/Prosini Decl.	Joint Declaration of William R. Roberts, Patrick A. Garzillo, and Marsha S. Prosini, <i>attached to</i> Verizon Br. App. A as Tab F.
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Distance), NYNEX Long Distance Company)	
(d/b/a Verizon Enterprise Solutions),)	
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Select Services, Inc., for Authorization to)	
Provide In-Region, InterLATA Services in)	
Maryland, Washington, D.C., and West Virginia)	

EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

Introduction and Summary

The United States Department of Justice (“the Department”), pursuant to Section 271(d)(2)(A) of the Telecommunications Act of 1996¹ (“the 1996 Act”), submits this Evaluation of the application filed on December 19, 2002, by Verizon Maryland Inc., Verizon Washington, D.C. Inc., Verizon West Virginia Inc., Bell Atlantic Communications Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc. to provide in-region, interLATA services in Maryland, Washington, D.C., and West Virginia.

This application to the Federal Communications Commission (“FCC” or “Commission”) is Verizon’s first for Maryland, Washington, D.C., and West Virginia, and follows its successful

¹ Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified as amended in scattered sections of 47 U.S.C.).

application for long distance entry in Virginia, as well as those pertaining to Massachusetts, Rhode Island, Vermont, Maine, and New Hampshire in its New England region, and to Delaware, New Jersey, Pennsylvania, Connecticut, and New York.²

As the Department has explained, in-region, interLATA entry by a regional Bell Operating Company (“BOC”) should be permitted only when the local markets in a state have been “fully and irreversibly” opened to competition.³ This standard seeks to measure whether the barriers to competition that Congress sought to eliminate with the 1996 Act have in fact been fully eliminated and whether there are objective criteria to ensure that competitive local exchange carriers (“CLECs”) will continue to have nondiscriminatory access to the facilities and services they will need from the BOC in order to enter and compete in the local exchange market. In applying its standard, the Department considers whether all three entry paths contemplated by the 1996 Act -- facilities-based entry involving the construction of new networks, the use of the unbundled elements of the BOC’s network (“UNEs”), and resale of the BOC’s services -- are fully and irreversibly open to competitive entry to serve both business and residential customers.

The Department concludes that Verizon has generally succeeded in opening its local markets in Maryland, Washington, D.C., and West Virginia. However, concerns remain regarding Verizon’s provision of nondiscriminatory access to white pages directory listings for CLEC customers. In addition, it is not clear whether the prices supporting Verizon’s application in Washington, D.C. are appropriately cost-based. The Department therefore recommends that the Commission approve Verizon’s application for Section 271 authority in these three

² See generally *FCC Virginia Order*; *FCC Delaware/New Hampshire Order*; *FCC New Jersey Order*; *FCC Maine Order*; *FCC Vermont Order*; *FCC Rhode Island Order*; *FCC Pennsylvania Order*; *FCC Connecticut Order*; *FCC Massachusetts Order*; *FCC New York Order*.

³ See DOJ Oklahoma I Evaluation at vi-vii, 36-51.

jurisdictions only if it is able to assure itself that the concerns raised in this Evaluation have been resolved.⁴

I. State Commission Proceedings

A. Maryland

The Maryland Public Service Commission (“Maryland PSC”) has facilitated the development of competition in the local telecommunications markets by establishing carrier-to-carrier wholesale performance measurements⁵; conducting extensive pricing proceedings that established wholesale rates for unbundled network elements (“UNEs”)⁶; and adopting a Performance Assurance Plan (“PAP”) intended to ensure that an appropriate level of wholesale performance is maintained once Verizon’s Section 271 application is approved.⁷ The Maryland PSC’s review of Verizon’s state Section 271 filing included an independent third-party

⁴ In addition to the concerns discussed below, the Department notes the issue raised regarding dialing parity. *See* FiberNet Comments at 56-60. FiberNet claims that it has had to purchase interstate special access facilities or purchase services from interexchange carriers, “at significant expense,” in order to allow its West Virginia customers in certain communities bordering Ohio to complete local calls into Ohio. *Id.* at 58-59. While these calls cross state boundaries, they are within areas designated as Verizon local calling areas, and Verizon customers are able to complete such calls as local calls.

It appears from FiberNet’s complaint that it is not able to efficiently assemble by means of UNEs what Verizon has put together by contract with other local exchange carriers, an issue that may have implications for Verizon’s West Virginia application. Alternatively, if it turns out that the issue implicates a problem with interconnection in Ohio and not with Verizon’s application, there remains the question of whether, until the problem is resolved, Verizon has an obligation under the dialing parity requirement to complete FiberNet’s calls using facilities and interconnection agreements it has negotiated, as it does for its retail customers as well as for those CLEC customers being served by the UNE-platform and resale. The Department believes that this issue may have a significant competitive impact in parts of West Virginia but defers to the FCC’s interpretation of the applicable requirements and whether they are satisfied by Verizon.

⁵ Maryland PSC PMs Letter at 1-2 (adopting revised performance measures substantially the same as those in New York); *see also* Verizon Guerard/Canny/DeVito Decl. ¶ 16 (stating Verizon expects to report performance pursuant to revised measures beginning January 2003).

⁶ Maryland PSC Pricing Order I at 29-31 (establishing recurring rates); Maryland PSC Section 271 Compliance Letter I at 9 (requiring reductions in loop and switching rates); Maryland PSC Pricing Order II at 7-8 (establishing non-recurring and additional recurring rates). The Maryland PSC subsequently initiated a proceeding to reexamine UNE rates, Maryland PSC Pricing Proceeding Order at 4, in which the record has closed and a final decision is pending, Verizon Br. at 47-48 n.45.

⁷ Maryland PSC PAP Order at 21-24 (approving Maryland PAP, effective on date federal Section 271 application is filed (Dec. 19, 2002)); *see also* Verizon Guerard/Canny/DeVito Decl. ¶¶ 90-91 (explaining Maryland PAP is based on those adopted in New York, Virginia, and other Verizon states).

assessment by PricewaterhouseCoopers (“PwC”) designed to determine whether the operations support systems (“OSS”) that Verizon uses in Maryland are the same as those it uses in Virginia.⁸ PwC concluded that Verizon’s assertions regarding the sameness of its “Maryland, West Virginia, Washington, D.C. and Virginia Operational Support Systems (specifically the pre-order, order, provisioning, maintenance & repair, relationship management infrastructure, and billing domains) and the Performance Measures Calculations Processes” are “fairly stated, in all material respects.”⁹ The Maryland PSC has recommended that the FCC approve Verizon’s Section 271 application.¹⁰

B. Washington, D.C.

The District of Columbia Public Service Commission (“District of Columbia PSC”) has facilitated the development of competition in local telecommunications markets by establishing carrier-to-carrier wholesale performance measurements¹¹; conducting extensive pricing proceedings that established wholesale rates for UNEs¹²; and adopting a PAP intended to ensure that an appropriate level of wholesale performance is maintained once Verizon’s Section 271

⁸ Verizon McLean/Webster Decl. ¶ 9.

⁹ PwC Sapienza/Cobourn Decl. ¶¶ 9-13; *see also FCC Virginia Order* ¶¶ 22-24 (concluding Verizon provides CLECs non-discriminatory access to its OSS in Virginia).

¹⁰ Maryland PSC Section 271 Compliance Letter II at 1 (noting Verizon has satisfied conditions for Section 271 compliance); Maryland PSC Section 271 Compliance Letter I at 1-3, 10-11 (finding Verizon satisfies checklist requirements subject to certain conditions).

¹¹ District of Columbia PSC Comments at 78; District of Columbia PSC PMs Order at 13-14 (noting approval of use of performance measures substantially same as those in Massachusetts, New Hampshire, and New York); *see also* Verizon Guerard/Canny/DeVito Decl. ¶ 26 (new measures took effect September 2002).

¹² District of Columbia PSC Comments at 27; District of Columbia PSC Pricing Order I at 185-86 (establishing permanent UNE rates). However, Verizon petitioned for reconsideration of the permanent rates, claiming that they are “substantially below the range that any reasonable application of TELRIC principles would produce.” Verizon Br. at 55; District of Columbia PSC Comments at 3-4, 27, 93. By law, the rates applicable during reconsideration are those in effect prior to establishment of the permanent rates, District of Columbia PSC Pricing Order II at 1, 3, which were never deemed to comply with TELRIC principles, District of Columbia PSC Comments at 27, 93. Verizon recently, however, submitted to the District of Columbia PSC, and gained approval of, an amendment to its interconnection agreement with a District of Columbia CLEC that contains new rates benchmarked to the New York UNE rates. District of Columbia PSC Pricing Order III; *see also infra* Section IV.

application is approved.¹³ The District of Columbia PSC's review of Verizon's Section 271 filing included an independent third-party assessment in which PwC found Verizon's assertions regarding the "sameness" of its Washington, D.C. and Virginia OSS to be "fairly stated, in all material respects."¹⁴ The District of Columbia PSC found that Verizon's application "generally has met the checklist conditions," with the exception of the UNE rates that were in effect at the time Verizon's application was filed with the FCC.¹⁵

C. West Virginia

The West Virginia Public Service Commission ("West Virginia PSC") has facilitated the development of competition in the local telecommunications markets by conducting extensive pricing proceedings that established wholesale rates for UNEs¹⁶ and adopting a PAP intended to ensure that an appropriate level of wholesale performance is maintained once Verizon's Section 271 application is approved.¹⁷ The West Virginia PSC's review of Verizon's Section 271 filing included an independent third-party assessment in which PwC found

¹³ District of Columbia PSC Comments at 2, 5-6; District of Columbia PSC PAP Order at 1, 48-49 (approving District of Columbia PAP effective upon date of Order (Sept. 9, 2002), with Verizon's first remedy payments due in fourth month); *see also* Verizon Guerard/Canny/DeVito Decl. ¶¶ 116-18 (explaining District of Columbia PAP is based on that adopted in Maryland, based in turn on those adopted in New York and Virginia).

¹⁴ PwC Sapienza/Cobourn Decl. ¶¶ 9-13; *see also* FCC Virginia Order ¶¶ 22-24 (concluding Verizon provides CLECs non-discriminatory access to its OSS in Virginia).

¹⁵ District of Columbia PSC Comments at 2 ("[W]ith one exception [the pricing issue], the Commission does not believe that these concerns are sufficiently grave as to merit a recommendation to reject Verizon DC's Section 271 application[.]"). *But see supra* note 12; *infra* Section IV (regarding the current status of pricing in the District of Columbia).

¹⁶ West Virginia PSC Comments at 48-49, 56, 135; West Virginia PSC Pricing Order I at 9-10 (establishing UNE rates); West Virginia PSC/Verizon First Joint Stipulation at 2-4 (adopting revised switching rates and effectively reducing loop rates by reallocating wire centers among density zones); West Virginia PSC Pricing Order II at 38 (approving second joint stipulation setting additional UNE rates for new UNEs and revising non-recurring charge rates, and reducing certain non-recurring rates); *see also* West Virginia PSC/Verizon Second Joint Stipulation at 1-3.

¹⁷ West Virginia PSC Comments at 131-32; *see also* Verizon Guerard/Canny/DeVito Decl. ¶¶ 29, 116-19 (explaining proposed West Virginia PAP is based on that adopted in Maryland, based in turn on those adopted in New York and Virginia, and effective date of PAP is pending before West Virginia PSC). In West Virginia, Verizon voluntarily reports its performance pursuant to measures that are substantially the same as those adopted in Massachusetts, New Hampshire, and New York. *Id.* ¶ 23.

Verizon's assertions regarding the "sameness" of its West Virginia and Virginia OSS to be "fairly stated, in all material respects."¹⁸ The West Virginia PSC has recommended that the FCC approve Verizon's Section 271 application.¹⁹

II. Entry into the Local Telecommunications Markets

In assessing whether the local markets in a state are fully and irreversibly open to competition, the Department looks first to the actual entry in a market.²⁰ But the Department does not broadly presume that all three entry tracks -- facilities-based, UNEs, and resale -- are open or closed on the basis of an aggregate level of entry alone.²¹ The following table reports CLEC entry in Maryland, Washington, D.C., and West Virginia in terms of shares of total residential and business lines served and shares of residential and business lines served by means of each mode of entry.

¹⁸ PwC Sapienza/Cobourn Decl. ¶¶ 9-13; *see also FCC Virginia Order* ¶¶ 22-24 (concluding Verizon provides CLECs non-discriminatory access to its OSS in Virginia).

¹⁹ West Virginia PSC Comments at 1; *see also* West Virginia PSC Section 271 Compliance Letter at 1-2.

²⁰ *See* DOJ Pennsylvania Evaluation at 3-4 ("The Department first looks to actual competitive entry, because the experience of competitors seeking to enter a market can provide highly probative evidence about the presence or absence of artificial barriers to entry. Of course, entry barriers can differ by types of customers or geographic areas within a state, so the Department looks for evidence relevant to each market in a state." (Footnote omitted.)).

²¹ *See, e.g.,* DOJ Georgia/Louisiana I Evaluation at 7; DOJ Missouri I Evaluation at 6-7.

CLEC Entry by State²²

		Maryland	Washington, D.C.	West Virginia
	Total Lines²³	4,240,383	1,177,967	871,959
	Total Bus. Lines	1,749,509	873,560	250,919
	Total Res. Lines	2,490,874	304,407	621,040
CLEC Shares	% Total Lines	12.6	18.0	5.3
	% Total Bus.	24.9	21.1	16.9
	% Total Res.	3.9	9.4	0.7
	% Bus. Fac-B	19.6	19.7	12.8
	% Bus. UNE-P	1.8	0.4	0.7
	% Bus. Resale	3.5	0.9	3.4
	% Res. Fac-B	1.6	6.7	*** ²⁴
	% Res. UNE-P	0.4	0.5	0.02
	% Res. Resale	1.9	2.1	0.6

Given the regional nature of Verizon's OSS, the Department evaluates entry regionwide, taking note that pricing or other state-specific factors may significantly affect the degree to which CLECs use a mode of entry in a particular state. The levels of entry and the absence of evidence that entry has been unduly hindered by problems with obtaining inputs from Verizon lead the Department to conclude that opportunities are available to competitive facilities-based carriers

²² See Verizon Torre Decl. Attach. 1 at 3 tbl.1, Attach. 2 at 3 tbl.1, Attach. 3 at 3 tbl.1 (CLEC lines as of September 2002); Verizon Roberts/Garzillo/Prosini Decl. ¶ 42 (Verizon lines in Maryland as of September 2002); Verizon Johns/Garzillo/Prosini Decl. ¶ 31 (same in Washington, D.C.); Verizon Given/Garzillo/Sanford Decl. ¶ 48 (same in West Virginia). The second three categories report CLEC lines as percentages of total lines, business lines, and residential lines, respectively; the last six categories report percentages of business and residential lines served by CLECs by means of each mode of entry, i.e., facilities-based (service via primarily a CLEC's own network that is either connected directly to the customer premises or connected through loops leased from the BOC), UNE-platform (a combination of loop, switch, and transport elements), and resale.

²³ Figures report total lines in Verizon's service area in Maryland and West Virginia, each of which has incumbent local exchange carriers other than Verizon. Verizon is the only incumbent carrier in the District of Columbia.

²⁴ The line count necessary to derive this percentage is confidential business information. See Verizon Torre Decl. Attach 3 at 3 tbl.1.

serving business customers in all three jurisdictions and serving residential customers in Washington, D.C.²⁵ In all three jurisdictions, however, there is less competition to serve business and residential customers via other modes of entry. The Department recognizes that the systems and processes serving competitors in Maryland, Washington, D.C., and West Virginia are largely the same as those at issue and approved in the Virginia proceedings and therefore, notwithstanding the lower levels of competition in certain modes of entry in these states, finds the OSS sufficient to support competitive entry subject to the concerns discussed below.

III. White Pages Directory Listings

CLECs complain about inaccurate and omitted directory listings²⁶ and appear to attribute the problems to flaws in Verizon's processes and procedures.²⁷ One commenter claims that inaccuracies and omissions are encountered at various points of the directory listing production process even after Verizon issues a confirmation that appears to be accurate or a CLEC initiates a correction.²⁸ Although Verizon appears, for the most part, to meet or exceed the standard for the relevant directory listings accuracy metric,²⁹ this metric measures only one part of the upstream

²⁵ *But see supra* note 4 (concerning local dialing parity).

²⁶ *See* FiberNet Comments at 47 (claiming that "FiberNet customers have often been eliminated from the Verizon-WV white pages directory"); AT&T Comments at 35 (asserting Verizon has failed to "provide mechanisms for ensuring accurate transmittal and printing of telephone directory entries for CLECs").

²⁷ *See* FiberNet Comments at 48-49 (claiming the majority of directory errors or omissions are attributable to Verizon-WV's manual processing of service orders when switching Verizon customers to CLECs providing service through UNE-loops); AT&T Comments at 35 (noting Verizon's allegedly deficient processes have resulted in substantial inaccuracies in the listing of CLEC numbers).

²⁸ *See* AT&T Comments at 37-38 (concluding Verizon's decision to abandon reliance on local service request confirmation ("LSRC") to ensure accuracy of directory listings by CLECs is effectively admission by Verizon that its "processes are inadequate to ensure the accuracy of directory listings at *any* stage of its process, even after the order has been completed").

²⁹ *See* Verizon VA Carrier-to-Carrier Performance Reports (PMs OR 6-04-1020 (% Accuracy-Stand-alone Directory Listing Orders), OR 6-04-1030 (% Accuracy-Other Directory Listing Orders)); Verizon MD Carrier-to-Carrier Performance Reports (same); Verizon DC Carrier-to-Carrier Performance Reports (PM OR 6-04-1030 (% Accuracy-Directory Listing)); Verizon Guerard/Canny/DeVito Decl. ¶ 52 n.1 & Attachs. 5 & 6 (District of Columbia data). Verizon has reported performance pursuant to this measure in the District of Columbia and Maryland as of September and November 2002 respectively and intends do so in West Virginia as of January 2003. Verizon McLean/Webster Decl. ¶ 102.

process of creating a directory listing.³⁰ As in Virginia, however, no metric in Maryland, Washington, D.C., or West Virginia measures accuracy at the subsequent production phases at which CLECs are complaining about errors.³¹

These concerns are identical to those raised by CLECs with respect to Verizon's application for long distance authority in Virginia.³² In that proceeding, the Department explained that inaccuracies in directory listings caused by the regional BOC can result in substantial competitive harm.³³ The *FCC Virginia Order* addressed this issue at length.³⁴ The Commission recognized "serious problems" with Verizon's provision of directory listings, but found it complied with checklist item 8 by "[taking] the necessary steps to mitigate the problems and [demonstrating] a commitment to fix any unanticipated future problems that may arise."³⁵ According to Verizon, "these improvements were made in Maryland, the District [of Columbia], and West Virginia at the same time they were made in Virginia."³⁶

Verizon claims that it "provides access to its white pages directory listings in Maryland, the District [of Columbia], and West Virginia in the same manner as it does in its 271-approved

³⁰ See *FCC Virginia Order* ¶ 160 (noting that PM OR 6-04 compares directory listing information on a random sample of local service requests with information on their corresponding service orders); Verizon Guerard/Canny/DeVito Decl. ¶ 24 (noting that PM OR 6-04 is "substantially the same" in Virginia, Maryland, the District of Columbia, and West Virginia).

³¹ See, e.g., Verizon VA Carrier-to-Carrier Performance Standards at 40-41 (defining PM OR 6-04).

³² *FCC Virginia Order* ¶ 153 (noting that "commenters argue that Verizon processing errors lead to lost and incorrect directory listings and that the listing verification process that Verizon has put in place in Virginia is inconsistent with the demands of section 271").

³³ DOJ Virginia Evaluation at 7-9 & n.32 (quoting *FCC Texas Order* ¶ 358 (explaining that "irregularities involving the white pages are a very serious matter because customers may tend to blame the new competitor, rather than the familiar incumbent, for mistakes," and noting that "a systemic problem involving a significant number of listings . . . would warrant a finding of noncompliance")).

³⁴ *FCC Virginia Order* ¶¶ 152-68.

³⁵ *Id.* ¶ 153.

³⁶ Verizon Br. at 72.

states.”³⁷ However, commenters in this proceeding claim that Verizon is now asking CLECs to verify the correctness of their directory listings in a new way and that Verizon has therefore changed the directory listings review process that it relied upon to obtain approval of its Section 271 application in Virginia.³⁸ Verizon asserts that it implemented several measures for checking the accuracy of listings and that it has merely responded to problems experienced by CLECs by asking them to focus on a different step of the process in order to effectively verify that the listings are correct.³⁹ Moreover, as noted, it appears that the Commission anticipated that there could be problems with Verizon’s initial approach and expected it to take corrective action if and when such problems arose.⁴⁰

The Department is not in a position to determine definitively the effectiveness of Verizon’s efforts since its Virginia Section 271 application was approved, especially given the recent modifications noted above. The Department recognizes that the Commission may receive additional information during its consideration of Verizon’s application regarding Verizon’s

³⁷ *Id.* at 69; *see* Verizon Lacouture/Ruesterholz MD Decl ¶ 289; Verizon Lacouture/Ruesterholz DC Decl ¶ 278; Verizon Lacouture/Ruesterholz WV Decl ¶ 274; Verizon McLean/Webster Decl. ¶ 91; *see also FCC Virginia Order* ¶ 153 (finding that Verizon’s provision of white pages directory listings satisfies the checklist).

Verizon notes low rates of error in four directories published in West Virginia since modifications in the directory listing process were made, finding only “114 [errors] out of more than 11,000 total CLEC listings.” Verizon Br. at 71 n. 58; *see also* Verizon McLean/Webster Decl. ¶ 111. However, CLECs challenge the validity of this data. *See* AT&T Comments at 35-36 (concluding the error rate “would have undoubtedly been far higher if Verizon had reviewed only *changes* in directory listings, rather than the total number of listings (which included numerous listings for customers that had not migrated to CLECs during the interval)”; FiberNet Comments at 53 (noting that numerous publication errors illustrate serious problems in the Verizon-WV directory listing process and that “only a sample of listings from those 4 books were checked and corrected, which only indicates that there were likely errors in listings that were not checked by Verizon-WV”).

³⁸ *See, e.g.,* AT&T Comments at 37-38 (asserting Verizon “now advises CLECs that, rather than use the LSRC, they should use its Directory Listing Inquiry . . . transaction” to verify listings after the completion step and also use the listings verification report as the final verification step, in contrast to its reliance on the LSRC during the Virginia Section 271 proceeding).

³⁹ *See* Verizon McLean/Webster Decl. ¶ 112 (acknowledging that Verizon’s advice to CLECs to “review listing information at the confirmation step of the order processing cycle . . . appear[s] to [have] contribute[d] to the problem” and that instead CLECs should use “the Directory Listing Inquiry (‘DLI’) transaction to verify listings”).

⁴⁰ *FCC Virginia Order* ¶ 153 (concluding that Verizon has demonstrated a commitment to fix unanticipated future problems that may arise).

improvements to the directory listings process. Thus, while the Department is unable at this point to gauge the effectiveness of recent changes, the Commission could find Verizon's directory listing accuracy and processes to be sufficient to satisfy its Section 271 obligations.

IV. TELRIC Pricing in the District of Columbia

Due to Verizon's petition for reconsideration of the permanent UNE rates that the District of Columbia PSC had established and deemed to conform with the application of TELRIC, those rates were stayed and the former "proxy rates" came into effect as a matter of District of Columbia law.⁴¹ The District of Columbia PSC had stated that these proxy rates were not TELRIC-compliant.⁴² Verizon therefore sought the District of Columbia PSC's approval of alternate UNE rates (benchmarked to New York UNE rates) during the period of the stay by means of amended interconnection agreements, one of which it submitted to the PSC.⁴³ The District of Columbia PSC recently approved this amended interconnection agreement, at the same time stating that "a review of an interconnection agreement is not a rate-setting proceeding. As such, we do not make determinations that the rate is TELRIC-compliant, cost-based, or just and reasonable."⁴⁴ As it has previously, the Department defers to the Commission's ultimate determination of whether the UNE rates in effect in the District of Columbia are appropriately cost-based.⁴⁵

⁴¹ District of Columbia PSC Comments at 27; *see also supra* note 12.

⁴² District of Columbia PSC Comments at 27.

⁴³ Verizon DC Pricing I *Ex Parte* Attach. A (proposed rates benchmarked to New York rates); Verizon DC Pricing II *Ex Parte* (amended interconnection agreement submitted to District of Columbia PSC January 9); *see also* District of Columbia PSC Comments at 93 (describing Verizon's new rate proposal).

⁴⁴ District of Columbia PSC Pricing Order III at 4. The District of Columbia PSC had asserted that, if it approved an amended interconnection agreement "after a complete review," it could then "support Verizon DC's Section 271 Application." District of Columbia PSC Comments at 93.

⁴⁵ *See* DOJ Rhode Island Evaluation at 6; DOJ Missouri I Evaluation at 1-2; DOJ Kansas/Oklahoma Evaluation at 11.

V. Conclusion

The record in this matter suggests that Verizon has generally succeeded in opening its local markets in Maryland, Washington, D.C., and West Virginia to competition in most respects. The Department therefore recommends approval of Verizon's application for Section 271 authority in these three jurisdictions, subject to the FCC's satisfying itself that the concerns raised in this Evaluation have been resolved.

Respectfully submitted,

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